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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,634	11/09/2001	Giorgio Rizzoni	OSU1159-143C	9242

8698 7590 06/09/2003

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EXAMINER
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ZANELLI, MICHAEL J

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/039,634	RIZZONI ET AL.	
	Examiner Michael J. Zanelli	Art Unit 3661	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 09 November 2001.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,8-20 and 23-25 is/are rejected.
- 7) Claim(s) 7,21 and 22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 July 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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## DETAILED ACTION

1. This application claims benefit of a provisional application; however, the provisional application does not support claims 6, 7, 15, 20 and 23-25. Figures 9-13 and pages 13-14 are not disclosed in the earlier filed application. This subject matter is not entitled to the earlier filing date. Further, a nonprovisional application can not be a Continuation-in-part of a provisional application (see MPEP 201.08). It is noted, however, that this application appears to qualify as a Continuation-in-part of copending application 10/039636, filed concurrently with this application. It is suggested that applicant amend priority claim to a Continuation-in-part of S.N. 10/039636, which claims priority to provisional application 60/247849.
2. The IDS filed 2/27/02 has been considered.
3. Claim 9 is objected to because of the following informalities: after “claim 8” insert --wherein--. Appropriate correction is required.
4. Claims 4, 5 and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. As per claim 4, the claim is unclear as recited with regards to further defining the partitioning of the core subsystem. Based on the disclosure at pages 4-5, it would appear to be more accurate to recite that the core subsystem comprises the various modules listed. The examiner suggests rewriting the claim to read “wherein the core subsystem comprises a vehicle dynamics module, a tire ...”.

B. As per claim 5, note comments above as it applies to the external subsystem (“wherein the external subsystem comprises an environmental module, a driver ...”).

C. As per claim 23, "the handling system" lacks antecedence.

D. As per claim 24, "the propulsion system" lacks antecedence.

E. As per claim 25, "the auxiliary system" lacks antecedence

5. Claims 1-6, 8-20 and 22 of this application conflict with claims 1-12 and 14-17 of Application No. 10/039636. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claims 1-6 and 8-20 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-12 and 14-17 of copending Application No. 10/039636. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 16-20 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Tseng (6,144,904).

A. As per claim 16, Tseng discloses a vehicle fault detection system in which a sensor signal and a calculated signal are processed to produce a deviation (residual) which is analyzed by a diagnostic processor to diagnosis a fault (col. 1, lines 51-67; col. 3, line 56 to col. 4, line 24).

B. As per claim 17, as noted in col. 4, lines 11-21 a residual is generated based on the output of a vehicle model.

C. As per claims 18-20 and 23-25, applicant's definition of "core" and "external" subsystems include suspension and brake control systems, respectively. As noted in col. 3, lines 41-48, subsystems contemplated by Tseng include at least suspension and brake control systems.

10. Claims 1-15 and 21-22 are distinguishable over the prior art of record. As per claim 1, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, partitioning a vehicle model into a plurality of subsystems comprising at least one module and in which each subsystem has a residual evaluation method for diagnosing a fault. As per claim 8, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, a plurality of residual evaluation

units which provide fault data to a supervisor unit adapted to analyze and diagnose a problem based on the fault data. As per claims 21 and 22, the prior art does not disclose the residual evaluation unit and group of evaluation methods as claimed. Dependent claims 2-7 and 9-15 are distinguishable for at least the same reasons.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents represent the general state of the art.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (703) 305-9756. The examiner can normally be reached on Monday-Thursday 5:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A. Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

/mjz  
June 2, 2003



MICHAEL J. ZANELLI  
PRIMARY EXAMINER